

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

First Named Inventor: LONG, Jack W.

Art Unit: 1751

Appln. No.: 10/500,897

Examiner: KUMAR

Filed: April 1, 2005

Confirmation No.: 8878

For: Topical Treatment for Carpet and Textiles and
Topically Treated Carpet and Textile Products

November 5, 2007

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action mailed October 4, 2007, and to the requirement for restriction therein, Applicant elects, with traverse, the claims of Group I, i.e. Claims 1-13 drawn to the composition.

The Examiner's rationale for requiring restriction under PCT Rule 13.1 and 37 CFR 1.499 is not believed to be tenable. Accordingly, reconsideration and withdrawal of the restriction requirement are requested.

The Examiner asserts that the invention as claimed in Group I and II do not relate to a single inventive concept because they lack the same technical feature. Group II claims are directed to the method of producing the composition. While Claims 14 and 15 are directed to the steps by which the composition is made, both require the use of permethrin with the ingredients which make up the composition. The same technical feature is included as required.

The Examiner has addressed a prior art reference, rather than comparing the technical features recited in the claims of each Group; which is the proper consideration for determining whether there is unity of invention, i.e., a single inventive concept. Addressing the prior art is proper when the claims are examined for patentability, not for whether the inventive feature is claimed in two Groups.

As noted in MPEP 802.03,

“Rule 13 of the Patent Cooperation Treaty indicates that an application should relate to one invention or to a group of inventions so linked as to form a single general inventive concept. This single general inventive concept under the Patent Cooperation Treaty relating to unity of inventions in international applications substantially conforms to the concepts for the restriction practice which has been used in national applications in the Patent and Trademark Office.”

The Patent and Trademark Office guidelines indicate that if the search and examination of an entire application can be made without serious burden, the Examiner is encouraged to examine it on the merits, even though it includes claims to distinct and independent inventions. The fact that two classes are involved is not a serious burden.

Only after it is demonstrated that two or more claimed inventions have no disclosed relationship, i.e. there is no unity of invention, restriction should be required. Where claimed inventions in a single application depend on the same technical feature joinder in a single application must be permitted.

In view of the foregoing, reconsideration and withdrawal of the requirement for restriction are earnestly solicited. In the event the Examiner repeats his requirement, Applicant provisionally elects for purposes of prosecution, the claims of Group I, namely 1-13.

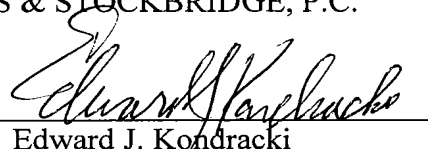
The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T3798-902778US01) any fees under 37 C.F.R. §§1.16 and 1.17 that may be

required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

MILES & STOCKBRIDGE, P.C.

By: _____


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